

S E A T T L E   P O L I C E   D E P A R T M E N T

*Office of  
Professional  
Accountability*



SPD Mediation Program Review

August - December 2005

S A M P A I L C A  
D I R E C T O R

## **ACKNOWLEDGEMENTS**

*The Office of Professional Accountability in the Seattle Police Department gratefully acknowledges Judge Terrence Carroll, and several of his colleagues at Judicial Dispute Resolution, Judges Finkle, Jordan, and Scott for their donation of time and expertise to the OPA citizen-police mediation program.*

*The Director also thanks Associate Director John Fowler for his management of the Mediation Program and production of this report. Getting a new program off the ground requires perseverance, resilience, and a lot of legwork. Both the City's police officers and its citizens will benefit from his committed stewardship.*

## **TABLE OF CONTENTS**

- Executive Summary
- Mediation Program Overview
- Stats/Charts
- Program Information
  - Mediation Brochure with forwarding letter
  - Mediation Fact Sheet
  - Implementation Policies
  - Guild Contract Language
  - SPD Press Release
  - Mediator Exit Survey
  - Participant Exit Survey

## **EXECUTIVE SUMMARY**

Judge Terrence Carroll served as the Independent Auditor of Internal Investigations for the Seattle Police Department from 1992 through 2002. In his public reports, Judge Carroll advocated vigorously for mediation as an alternative to the normal complaint investigation process. A professional mediator himself, Judge Carroll recognized that many complaints from community members about police conduct could be resolved successfully if the parties had the opportunity to sit down in a neutral, non-confrontational and confidential environment.

The newly created Office of Professional Accountability (OPA) was easily persuaded of the great potential mediation held for greater citizen and officer satisfaction. Its proposal for a mediation program was negotiated with the Seattle Police Officers Guild. The parties agreed to add mediation as an alternative to traditional complaint investigation.

In August 2005, OPA implemented its new police-citizen mediation program. The program provides an alternative for the resolution of citizen complaints about police conduct outside of the traditional complaint investigation process.

Now, for the first time, community members and police officers have an opportunity to talk out their issues with the assistance of a neutral, professional mediator. In an extraordinary commitment of time and resources, Judge Carroll and several of his colleagues at Judicial Dispute Resolution agreed to volunteer their time and expertise to hear cases referred from OPA for mediation throughout the inaugural year of the program.

This Report fully explains the new mediation program and provides information about the cases referred and mediated through December 2005. Though the number of mediations reported on is low, all indicators are that the mediation program is achieving its goal of greater participant satisfaction and improved mutual understanding.

The Seattle Police Department and the Office of Professional Accountability extend their sincere gratitude to Judge Carroll and Judicial Dispute Resolution. Their support and commitment of time and expertise has added immeasurably to the chances of success for this important community program.

# **MEDIATION PROGRAM – A NEW OPPORTUNITY**

## **The Shortcomings of Traditional Complaint Investigation**

The traditional complaint investigation system is not the best way to resolve many of the complaints made by citizens about police conduct. For one thing, not every citizen with a complaint against a police officer wants to see the officer punished. Some complainants want to understand why an officer took a particular action, or to be able to explain their own actions.

Even if a complainant wants a full investigation, they still may be daunted by the experience. The system is rigid, formal, and can be intimidating. In addition, the process is lengthy. Full investigations frequently take over six months to reach final resolution. Moreover, the system is adversarial by nature. The cycle of accusation and defense encourages strict adherence to positions staked out early on. Both parties can become defensive and there is little incentive to acknowledge any responsibility for the breakdown of communication or conduct.

A clumsy process might be worth the trouble if the results brought satisfaction, but both research and common sense tell us that's not the case. Often, even when a citizen has a legitimate concern, the facts still do not support that any Department rules were broken. Both law and policy grants officers wide discretion in the exercise of their duties, and most officer conduct falls within those boundaries. The citizen whose complaint is not "sustained," feels frustrated, obstructed, and concludes the whole process was a waste of time because the system is designed to protect the officer. Even a sustained complaint brings little satisfaction, as citizens understand little about the discipline of public employees and have no additional role to play after their initial interview.

At the same time, the accused officer has gained little from the process other than considerable stress. They often feel like decisions and actions made in a tense situation are being examined by others who were not in their shoes, and with the improved vision provided by hindsight. A sustained finding or significant complaint history can negatively impact careers so there is significant incentive to present a strong defense.

So, whatever the outcome of the investigation, the parties most affected are left dissatisfied and often embittered by the process. Opportunities for communication, insight, and deeper understanding are squandered.

## **The Mediation Alternative**

By contrast, mediation is a simple, direct process that allows participants to share their perspective of an incident. The process is facilitated by an experienced third-party in a neutral, confidential environment. The mediator helps citizens and officers talk and listen to each other. Mediators are trained and experienced in helping people talk through and resolve their conflicts in constructive ways.

The session offers officers and citizens an opportunity to hear how their actions affected each other. It can make a real difference in the understanding, attitude, and behavior of participants. Further, it gives the officers and citizens the power to resolve their issues themselves, rather than to depend on the judgment of others.

Mediation doesn't rely on evidence or witnesses. As an alternative to the traditional complaint investigation process, mediation focuses on the relationship between the parties, not strictly on the conduct of the officer.

Through mediation, officers and citizens can clear up misunderstandings, miscommunication, or a lack of communication during a particular incident. The process will help citizens learn about the basis for police officers' actions in ways that promote an improved understanding of the officer's job, the dangers in police work, and the totality of circumstances that led the officer to act the way he or she did.

At the same time, mediation offers an opportunity for officers to learn more about the effect their words, behaviors, and actions can have on the public, and helps to demonstrate the impact and effectiveness of communication and facilitation. Officers will benefit from an improved department image and relations with the community.

# **HOW OPA'S MEDIATION PROGRAMS WORKS AT SPD**

## **Case Selection**

The Department has full discretion to determine whether or not mediation of a complaint is appropriate. The OPA Director's Office identifies complaints as appropriate candidates for mediation.

Generally, mediation is approved for cases where there is potential for: (1) greater complainant satisfaction; (2) increased understanding of police practices and procedures; (3) improved officer conduct by understanding how actions are perceived and the impact they have; and (4) improved relationships between the community and the police.

Examples include: professionalism (courtesy/remarks), exercise of judgment and discretion, failure to take appropriate action, misuse of authority, and violations of rules and regulations such as duty to identify.

Complaints that, if the allegations were sustained, would result in significant discipline, are not considered eligible.

Complaints of unnecessary or excessive force are generally not considered for mediation. However, many uses of force can occur due to miscommunication and misperception. If minimal force is alleged, minimal injury occurred, and/or the force alleged is similar to the force described in a use of force report, a complaint of unnecessary or excessive force may be referred for mediation.

Past or current complaint history of the officer, previous mediation history, and any record of prior complaints by the citizen may be taken into consideration when determining whether a complaint is eligible for mediation.

## **Voluntary Participation**

Mediation is entirely voluntary: both the citizen and officer must agree to participate. If a complaint is selected for mediation, the OPA notifies the complainant, provides information, and attempts to secure a commitment to participate.

If the complainant agrees to participate in mediation, OPA notifies the officer, provides information, and determines whether the officer is willing to participate.

Where both parties have agreed, the OPA works with the citizen, officer, and Judicial Dispute Resolution to schedule the mediation at the earliest convenient opportunity.

## **Confidentiality**

Maintaining confidentiality is critical to the success of mediation. It is important for the parties to understand that nothing they say in mediation can be used against them later. Each party can communicate without fear that their comments will subject them to discipline, retribution, or blame.

Participants sign a binding confidentiality agreement. Under state law, the content of a mediation session is not subject to subpoena or discovery, and courts have upheld a mediator-client privilege.<sup>1</sup> The mediator will only certify to the OPA whether or not the parties met and participated in good faith. The proceedings, discussion, and any resolution remain confidential.

OPA may, however, seek feedback from participants via confidential and voluntary surveys. In addition, OPA survey forms do ask the participants, at the completion of the mediation, to consider a full or partial waiver of confidentiality for research or promotion purposes.

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<sup>1</sup> The only exception is where mandatory report requirements may apply for admissions of criminal acts or threats by any party.



## **Outcome of Mediation**

The goal in police-citizen is about getting people to talk, listen, and understand each other's point of view. Officers are not required to reach a formal resolution, nor are they forced to apologize or shake hands and make up.

What is required of the officer is that he or she participates in good faith. Good faith means that the officer (a) actively listens to the perspective of the other party and (b) fully communicates his/her own interests and engages in the discussion.

If the mediator certifies that an officer has not participated in good faith, the case will be returned to OPA for classification, investigation, and possible discipline. The mediator's determination that an officer has or has not participated in good faith is not subject to challenge.

## **Effect of Mediation**

Mediation diverts a complaint from the complaint investigation and discipline process. If the citizen and officer agree to mediate, the complaint will not result in discipline and will not be recorded on the employee's complaint history.

This creates an obvious incentive for officers to agree to mediate complaints made against them. The benefit to the Department and the community is that the mediation process holds greater promise for positively influencing officer conduct and attitudes.

It is expected that citizens may distrust the relative "one-sidedness" of the incentive to mediate. OPA acknowledges this legitimate skepticism, and responds with a discussion of the genuine, if less-tangible, benefits for the citizen who opts for mediation: the opportunity to be heard; facilitation by a neutral third-party not affiliated with the police department; greater power over the resolution of the conflict; speedier resolution; and the far greater likelihood of a satisfying outcome.

The hope is that with outreach, education, and time citizens will realize that they, too, have more to gain from mediation than from traditional complaint investigation and discipline.

## Cases Selected for Mediation August to December 2005

From August through December, the OPA Director selected sixteen cases for mediation.

Cases selected included allegations of:

- service quality
- rudeness
- excessive force
- misuse of authority
- biased policing
- failure to identify
- professionalism
- lack of courtesy

The status of the 16 selected cases is as follows:

Mediation Completed	-	3
Citizen refused mediation	-	7
Employee refused mediation	-	2
Other <sup>2</sup>	-	4

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<sup>2</sup> One complainant could not be reached; one complainant had moved out of state; one complainant refused to discuss any issues surrounding her complaint; and one complainant failed to show for a scheduled mediation session.

## **EVALUATION OF COMPLETED MEDIATIONS:**

### **Mediation #1:**

This complaint arose out of a complaint about an employee being illegally parked and allegedly blocking traffic. The complainant alleged that after he contacted the named employee, the officer became annoyed and retaliated by saying that he would be mailing the complainant a citation for standing in the street.

At the conclusion of the mediation, the mediator, employee, and citizen indicated the mediation was highly successful. The exit surveys use a "Likert" scale, with ratings from a low of 1 to a high of 5. Almost all of the responses were marked with a "5."

### **Mediation #2:**

This complaint involved the detention of a 16-year old girl at a fight disturbance that occurred at a high school football game. After the employee was able to determine that she was not involved in the incident, the youth was released. Her mother was angry and concerned that her daughter had been handcuffed and detained while others had not.

Again, the ratings by participants were very high, with an average rating of 5.

### **Comments from Participants:**

Written comments by the citizen and officer included the following:

"All of us came in with open minds, and came out with an agreement. This went well, and hopefully will continue in the future" (citizen).

"Anytime you can leave the situation with both parties smiling and sincere, it's good. This (mediation) cuts back on a lot of wasted time and frustration" (officer).

### **Comments from Participants:**

Written comments by the citizen and officer included the following:

"He answered all my questions and concerns. We heard both sides of the story" (citizen).

"I got to share my perspective and the 'why' of my actions. The same was afforded to the citizen and their feelings. This is not confrontational like at the scene. The citizen's emotions were lowered. As long as both parties come with the intentions to hear the other side as opposed to 'convince' it will be great program" (officer).

### **Mediation #3:**

This complaint arose out of an on-going interaction between a motel property owner and a series of police actions that the property owner considered to be harassment.

The citizen did not complete an exit survey, and there are indications that he was not fully satisfied. According to the mediator, the complainant came to the mediation with expectations beyond the spirit of the process. The complainant was unhappy that a resolution could not be reached.

### **Comments from Participants:**

Written comments by the officer included the following:

Still, the employee remained positive, supported the process, and wrote that, "(The) other party was not interested in hearing our side." When asked if the mediation ended the way he wanted it to, and what if anything was gained by mediating this case, the officer stated it provided "A chance to at least explain how we work as officers, and why we did what we did."

## **Citizen Refusal to Participate**

The main reason cited by citizens who elected not to participate in mediation was a desire to have the employee punished. Two citizens also expressed their interest in having the incident remain in the employee's complaint history. One citizen said that she felt so uncomfortable with the officer at the time of the incident that she didn't want to face him again in mediation.

As discussed above in the section on voluntary participation, the OPA is hopeful that time, outreach, and results will reduce the natural reluctance of citizens to elect mediation over traditional complaint investigation.

## **Officer Refusal to Participate**

In one case where an employee declined to participate in mediation, the officer stated he "didn't think it would be worthwhile and didn't want to waste his time." In another case, two officers cited a concern over the possible interpretation of language in the contract regarding mediation.

Again, a certain amount of skepticism is to be expected in the early stages of the program.

## **PROMOTION OF THE NEW MEDIATION PROGRAM**

The OPA made immediate efforts to inform both the Department and the community about its new mediation program.

### **Internally, OPA has:**

- Published an SPDALL (e-mail to all Department employees) on mediation
- Met with the SPOG Executive Board
- Trained OPA-IS staff on the program
- Met with Sergeants, Lieutenants, and Captains at each of the 5 precincts
- Produced and distributed literature for officers about mediation

### **Externally, OPA has:**

- Produced and distributed literature for citizens about mediation
- Issued a press release
- Provided information and interviews for a news story and editorial
- Presented information about the Mediation Program to: the Citywide Advisory Council; the Seattle Human Rights Commission; Seattle NAACP, ACLU, numerous City and County dispute resolution centers and multiple other police jurisdictions looking at initiating similar programs
- Scheduled a community forum for March 23, 2006

In addition, the OPA includes updates on mediation cases in its monthly reports, available on the City of Seattle website,

<http://www.seattle.gov/mayor/issues/OPA.htm>

The OPA has also posted all of documents related to the mediation program on the OPA website,

<http://www.cityofseattle.net/police/OPA/mediation.htm>

Into 2006, OPA has already begun to aggressively promote its mediation program both within the Department and within the community. Meetings with officers at roll call are being scheduled for each of three watches at all five precincts. Community forums are being organized and the OPA is scheduled and/or ready to present at community events and before groups and organizations.

## **CONCLUSION**

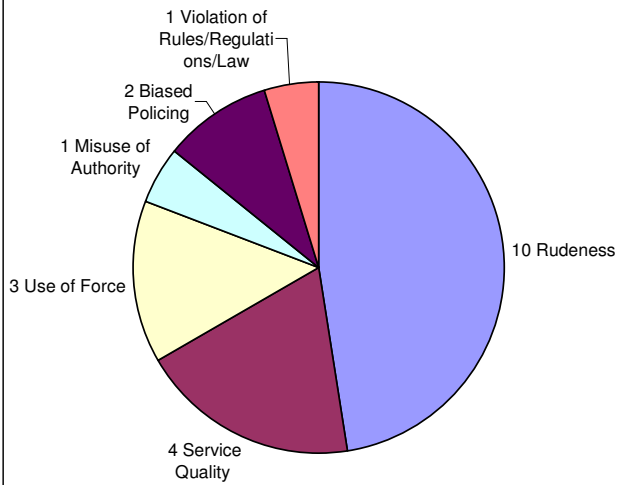
At the time of this report, only three mediations have been completed, and we must therefore view the results as preliminary. However, we are encouraged by the early response to the mediation program, and excited about its prospects for success.

For many citizens who bring complaints and concerns to OPA, and for the officers who are the subject of the complaints, mediation provides a more immediate, effective, and gratifying alternative. Both parties can walk away feeling understood, and understanding more themselves about how their words, actions, and attitudes impact others.

In 2006, the OPA will continue to evaluate and refine the mediation program, and to report on the ongoing progress in monthly reports.

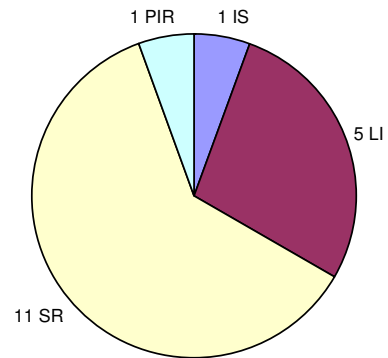
Further, the OPA will continue to direct attention and resources toward developing alternatives to the traditional complaint investigation and discipline system.

**Allegations included in Cases Selected for Mediation**



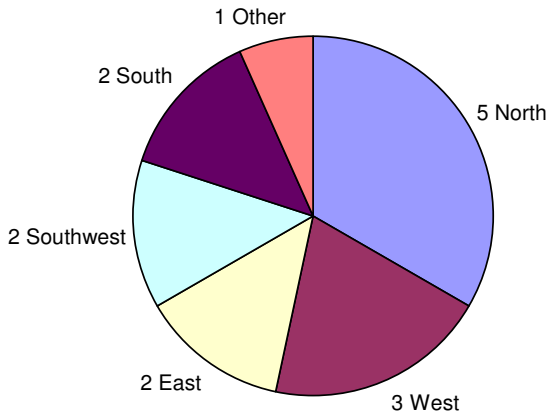
\*Note: One case could include multiple allegations. Chart above is all inclusive. Sixteen cases were selected for Mediation between 1 August - 31 December 2005. Those cases included 21 allegations/issues.

**Cases Selected for Mediation (original classifications)**

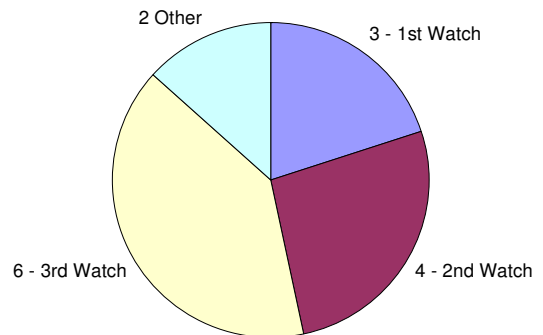


\*Note: One mediation selection combined three open complaints; two-LI, one-IS.

**Cases Selected for Mediation (by Precinct)**



**Cases Selected for Mediation (by Watch)**





### Suggestions for mediating constructively:

- ▶ *Avoid temptations to blame or attack*  
Casting blame or antagonizing others is most likely to just make them defensive, or push them to fight back, rather than encouraging them to really listen to you or to see your point of view.
- ▶ *Speak for yourself, and let others speak for themselves*  
Avoid assuming that you know why the other party behaved as they did. Instead, tell them how their behavior looked from your perspective, and how it impacted your behavior. Let *them* tell you what was going on from their perspective.
- ▶ *Show that you are listening*  
Mediation requires listening. Each side needs to be heard.
- ▶ *Talk it all through*  
Talk out everything that is important to you, whether or not it's significant to others.
- ▶ *Work toward a solution*  
Try to focus on interests and solutions, not blame. The goal is to resolve the conflict and prevent similar ones.

*This Mediation Program is managed by the Office of Professional Accountability, Seattle Police Department.*

### Some Reasons Citizens Mediate:

- To be fully heard and understood.
- To hear the officer's perspectives.
- To speak directly with the officer, rather than having the complaint decided by others.
- To give officers feedback.
- To prevent similar incidents.
- To regain confidence in police services, and respect for officers.

### Some Reasons Officers Mediate:

- To be understood – officers can't always explain their actions in the field.
- To hear the citizens' perspectives.
- To speak directly with the citizen, rather than having the complaint decided by others.
- To improve relations with citizens and communities.
- To resolve the complaint outside of the disciplinary process.



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The Seattle Police Department is an accredited law enforcement agency and meets the highest standards of the Commission on Accreditation for Law Enforcement Agencies.

## SEATTLE POLICE DEPARTMENT OFFICE of PROFESSIONAL ACCOUNTABILITY CITIZEN-POLICE MEDIATION PROGRAM



*Addressing concerns about police conduct  
through voluntary mediation*



## *Thank you for considering mediation!*

Mediation is a different way of handling citizen complaints about police conduct. The Office of Professional Accountability will identify cases where the parties might benefit from face to face discussion of their different perspectives on the police/citizen encounter that led to a complaint. If both the complainant and officer agree, the case will be taken out of the normal investigation process and set for a mediation session with a professional mediator outside of the department.

The mediator is a neutral third party trained and experienced in helping people talk through and resolve their differences in constructive ways. OPA has an agreement for services with some of the most experienced professional mediators in Seattle to conduct citizen-police mediations.

### *The Mediator will:*

- Explain the process and ground rules and answer any questions.
- Listen to both sides of the story.
- Ask questions to clarify what happened and identify central issues.
- Help keep the discussion focused, productive and non-threatening.
- Not take sides, place blame, or pass judgment.
- Certify the completion of the mediation and the good faith participation of the parties.
- Treat the discussion and information as confidential.

### *What a Mediation Session is:*

- An alternative to the traditional complaint and disciplinary process.
- A voluntary, confidential process where a professional mediator helps citizens and officers talk and listen to each other.
- A chance for officers to hear how their actions affected citizens and vice versa.

### *What a Mediation Session is not:*

- A process to make judgments about who is right or wrong. No evidence or witnesses are needed.
- A session where parties are forced to shake hands and make up.

### *The Benefits of Using Mediation:*

- Mediation allows officers and citizens to resolve complaints themselves, rather than depend on the judgment of others.
- Mediation is more satisfying than the regular complaint process. Nearly all those who have mediated say they would recommend it to others.
- Mediation can make a real difference in the understanding, attitude, and behavior of participants.
- Mediation can improve relationships between community members and police.
- Mediation is cost effective.
- Mediation is much faster than the traditional complaint investigation process.

### *The incident was unpleasant the first time, won't mediation be the same?*

Not necessarily. Mediation can work even with difficult people. Mediators are trained to help people resolve issues in constructive ways.

### *What if the other party just wants to verbally attack me?*

It is part of the mediator's job to prevent a mediation session from deteriorating to verbal attacks. While some venting (on both sides) is common, verbal abuse or threatening conduct are not acceptable in mediation. Mediators may separate the parties and work with them individually, or terminate the mediation if necessary.

### *Could something said in mediation be used against me later?*

Mediation is confidential; all participants sign a confidentiality agreement. The contents of a mediation session are not subject to subpoena or discovery, and courts have upheld the mediator-client privilege. The one exception is where mandatory reporting requirements apply for admissions of criminal acts by any party.

### *What if I am unhappy with how the mediation is progressing?*

Either party can leave mediation at any time. No one is compelled to reach conclusions or agreements.

### *Will I have to apologise or admit wrongdoing?*

No. You may not have done anything wrong. In any case, what you say is up to you. Some participants do apologize to each other – if they *choose* to do so.

# **Mediation: What is it?**

## **SPD Mediation Fact Sheet**

### **What a mediation session is:**

- An alternative to the traditional complaint and disciplinary process.
- A voluntary, confidential process where a professional mediator helps citizens and officers talk and listen to each other.
- A chance for officers to hear how their actions affected citizens and vice versa.

### **What a mediation session is not:**

- A process to make judgments about who is right or wrong. No evidence or witnesses are needed.
- A session where parties are forced to shake hands and make up.

### **The Benefits of Using Mediation:**

- Mediation allows officers and citizens to resolve complaints themselves, rather than depend on the judgment of others.
- Mediation is more satisfying than the regular complaint process. Nearly all those who have mediated say they would recommend it to others.
- Mediation can make a real difference in the understanding, attitude, and behavior of participants.
- Mediation can improve relationships between community members and police.
- Mediation is cost effective.

### **How Mediation Cases are Selected:**

Complainants are generally offered the option of mediation during the intake process; it is first and foremost the complainant's choice. Potential mediation cases must also be reviewed and approved by the OPA Director, the Captain of Internal Investigations, and the supervisors of the officers named in the complaints. If the officers also agree to participate, mediations are scheduled for a mutually agreeable time and place (including weekends and evenings).

### **What the Role of the Mediator is:**

The mediator is a neutral third party trained and experienced in helping people talk through and resolve their differences in constructive ways. The OPA has contracted with some of the finest professional mediators in the Pacific Northwest to conduct citizen-police mediations.

**The Mediator will:**

- Explain the process and ground rules and answer any questions.
- Listen to both sides of the story.
- Ask questions to clarify what happened and identify central issues.
- Help keep the discussion focused, productive and non-threatening.
- Not take sides, place blame, or pass judgment.

**Some Reasons Citizens Mediate:**

- To be fully heard and understood.
- To hear the officers' perspectives. To speak directly with the officer, rather than having the complaint decided by others.
- To give officers feedback.
- To prevent similar incidents.
- To regain their confidence in police services, and respect for officers.

**Some Reasons Officers Mediate:**

- To be understood – officers can't always explain their actions in the field.
- To hear the citizens' perspectives.
- To speak directly with the citizen, rather than having the complaint decided by others.
- To improve relations with citizens and communities.
- To resolve the complaint outside of the disciplinary process.

**FREQUENTLY ASKED QUESTIONS AND ANSWERS****Will I have to apologize or admit wrongdoing?**

No. You may not have done anything wrong. In any case, what you say is up to you. Some participants do apologize to each other – if they *choose* to do so.

**The incident was unpleasant the first time, won't mediation be the same?**

Not necessarily. Mediation can work even with difficult people. Mediators are trained to help people resolve issues in constructive ways.

**What if the other party just wants an opportunity to verbally attack me?**

It is part of the mediator's job to prevent a mediation session from deteriorating to verbal attacks. While some venting (on both sides) is common, verbal abuse or threatening conduct are not acceptable in mediation. Mediators may separate the parties and work with them individually, or terminate the mediation if necessary.



**Could something said in mediation get used against me later?**

Mediation is confidential: all participants sign a legally binding confidentiality agreement. The contents of a mediation session are not subject to subpoena or discovery, and courts have upheld the mediator-client privilege. The one exception is where mandatory reporting requirements apply for admissions of criminal acts by any party.

**What if I am unhappy with how the mediation is progressing?**

Either party can leave mediation at any time. No one is compelled to reach conclusions or agreements.

**SUGGESTIONS FOR MEDIATING CONSTRUCTIVELY:****Avoid temptations to blame or attack**

Casting blame or antagonizing others is most likely to just make them defensive, or push them fight back, rather than encouraging them to really listen to you or to see your point of view.

**Speak for yourself, and let others speak for themselves**

Avoid assuming that you know why the other party behaved as they did. Instead, tell them how their behavior looked from your perspective, and how it impacted your behavior. Let them tell you what was going on from their perspective.

**Show that you are listening**

Mediation requires listening. Each side needs to be heard.

**Talk it all through**

Talk out everything that is important to you, whether or not it's significant to others.

**Work toward a solution**

Try to focus on solutions, not blame. The goal is to resolve the conflict and prevent similar ones.

The Office of Professional Accountability  
Police-Citizen Mediation Program

**Thank you for Considering Mediation!**

Mediation is a voluntary, non-adversarial process for conflict resolution.

Not every citizen with a complaint against a police officer wants to see the officer punished. Some complainants want to understand why an officer took a particular action, or to be able to explain their own actions. Through mediation, officers and citizens can clear up misunderstandings, miscommunication, or a lack of communication during a particular incident. The process will help citizens learn about the basis for police officers' actions in ways that promote an improved understanding of the officer's job, the dangers in police work, and the totality of circumstances that led the officer to act the way he or she did.

At the same time, mediation offers an opportunity for officers to learn more about the effect their words, behaviors, and actions can have on the public, and helps to demonstrate the impact and effectiveness of communication and facilitation. Officers will benefit from an improved department image and relations with the community.

Mediation even offers an opportunity for officers and citizens alike to express regret in a neutral, confidential setting when they may not have met their own standards. Both officers and citizens can have a bad day and lose their tempers. Citizens rarely understand how frustrating it is to encounter repeated instances of citizen profanity, venting, lack of consideration, failure to comply, or petty but dangerous attempts to break the rules.

Please read the attached brochure for an explanation of how the OPA Mediation Program works at the Seattle Police Department.



Seattle Police Department

Investigation Section

**Office of Professional Accountability**

Title: ***I – OPA Mediation Program***

Chapter: ***II – OPA Director’s Office Procedure***

*Eligibility for Mediation*

- Complaints that, if the allegations were sustained, would likely not result in termination, demotion, or a suspension of more than five days will generally be considered for mediation. Examples include: conduct unbecoming (courtesy/remarks), failure to take appropriate action, misuse of authority, and violations of rules and regulations such as failure to identify.
- Complaints of unnecessary or excessive force are generally not eligible for mediation, except that mediation may be considered where minimal force was alleged, minimal injury occurred, and/or the force alleged is similar to that described in a use of force report.
- Past or current complaint history of the officer, previous mediation history, and any record of prior complaints by the citizen, may be taken into consideration when determining whether a complaint is eligible for mediation.

*Selection*

- The OPA Director will identify new complaints as appropriate candidates for mediation.
- OPA will notify the complainant, provide information, and attempt to secure a commitment to participate.
- If the citizen agrees to participate, OPA will notify the officer **via classification report, if possible**, provide information, and attempt to secure a commitment to participate.
- If either party declines to participate in mediation, the complaint will be classified and investigated pursuant to OPA-IS procedures.
- However, if a complainant refuses to participate in mediation after the employee has agreed to participate, the complaint may not result in discipline, nor be recorded on the employee’s complaint history.
- If both parties agree to participate, OPA will coordinate mediation within 30 days of the agreement. Parties will be notified of mediation time and location.

- Contract deadlines for notification, classification and investigation are tolled during this time period.

#### *Mediation*

- By mutual agreement with SPOG, mediators during the first year of the OPA Mediation Program will be supplied pro bono by Judicial Dispute Resolution.
- Any costs of mediation will be borne by SPD.
- Officer time spent in mediation will be considered “on-duty” time.
- Mediation will occur at a location agreed upon by the parties. The mediator may meet with both parties together, separately, or both, and review the incident in a non-confrontational setting.
- An OPA representative may attend sessions as an observer solely for quality monitoring and administrative purposes. The observer will be bound by all the confidentiality requirements of the other participants.

#### *Reporting*

- The mediator will inform OPA of the completion of the mediation, and whether the parties participated in good faith.
- Except for this information, all other information is considered confidential and will not be shared. All parties involved in the process shall sign a confidentiality agreement.
- If the mediator informs the Department that the employee participated in good faith, the complaint will be dismissed and not reported on the officer’s complaint history.
- Good faith is defined as:
  - The employee actively listens to the perspective of the other party; and
  - The employee fully communicates his/her own position and engages in the discussion.
  - Good faith does not require the employee to agree to any particular resolution of a complaint.
- The finding of the mediator that the employee did not participate in good faith is not subject to challenge. The complaint will be processed on the officer’s complaint history as a supervisory referral, but no discipline shall be imposed.



*Evaluation of the Program*

- OPA will maintain information on the number and types of complaints eligible for mediation; those that actually proceed; and the results of the mediation (see reporting above).
- OPA may seek feedback from the participants via confidential and voluntary surveys, and may ask the participants at the completion of the mediation to consider a full or partial waiver of confidentiality for research or promotion purposes.
- OPA will report internally and externally annually on the Mediation Program.



Seattle Police Department

Investigation Section

**Office of Professional Accountability**

Title: ***I – OPA Mediation Program***

Chapter: ***I – OPA-IS Procedure***

***New Complaints***

- OPA-IS staff will review and be familiar with the OPA Mediation Program. Staff may answer questions about the mediation program posed by citizens, or may refer them to the OPA Director's Office for additional information about the program.
- At the Intake Sergeant's discretion, and taking into consideration the nature of the complaint and the degree of receptivity to mediation perceived by the sergeant, he or she may inform a citizen about the mediation program, explain that eligibility for mediation is determined by the OPA Director, and ask the complainant whether he or she might be willing to consider mediation if the complaint is deemed eligible. All new complaints will continue to be classified according to current criteria and procedures.
- OPA-IS staff members may, but are not required to, flag for the next reviewer a new complaint as a possible candidate for mediation. Identification of a complaint as a possible candidate for mediation will **not** be taken into consideration when making a recommendation for appropriate classification.
- The OPA-IS commander may concur with an identification previously made, or newly identify the complaint as a possible candidate for mediation prior to the transmittal of the complaint to the OPA Director for review.
- Identification of complaints as possible candidates for mediation will be done by separate reference on the cover memo transmitting new case packets.

***Open Investigations***

- Based on information or developments during an open investigation, OPA-IS staff members may also identify an open complaint investigation as a possible candidate for mediation.
- If the OPA-IS commander concurs, he or she will notify the OPA Director of a possible candidate for mediation by memorandum separate from the investigative file.

## **SPOG CONTRACT LANGUAGE**

### **3.10 Mediation**

- A. The Department will have the discretion to determine whether or not mediation of a complaint is appropriate. The classification report will normally be used to inform the named employee that the Department has determined that a complaint is eligible for mediation. Complaints may also be deferred to mediation after an investigation has been commenced. Nothing herein shall affect the obligation of the employer that any discipline be imposed in accordance with just cause.
1. Voluntary process – Mediation will occur only if both the complainant and employee agree.
  2. Non-disciplinary process – If the employee agrees and participates in mediation, or the complainant refuses to participate after the employee has agreed to participate, the complaint will not result in discipline or a record on the employee's complaint history.
  3. If the mediator informs the Department that the employee participated in the process in good faith, the complaint will be dismissed and will not be recorded on the officer's complaint history. Good faith means:
    - a. The officer actively listens to the perspective of the other party; and
    - b. The officer fully communicates his/her own position and engages in the discussion.

Good faith does not require the officer to agree to any particular resolution of a complaint.
  4. If the employee does not participate in the mediation in good faith, a finding of which shall not be subject to challenge, the complaint will be processed and recorded on the officer's complaint history as a supervisory referral, but no discipline shall be imposed.
  5. Confidential process – The parties to mediation will sign a confidentiality agreement. The mediator will only inform the Department whether or not the parties met and participated in good faith. Any resolution will be confidential.
  6. Time spent at the mediation shall be considered on-duty time.

The panel of mediators will be jointly selected by the parties through the JLMC annually. All costs of mediation shall be borne by the City.

**SUBJECT:** Department Initiates Mediation Program for Citizen Complaints

**FOR IMMEDIATE RELEASE:**

8/18/2005 12:00:00 AM

**FOR MORE INFORMATION CONTACT:**

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**DEPARTMENT INITIATES MEDIATION PROGRAM FOR CITIZEN COMPLAINTS**

Chief Gil Kerlikowske today announced the implementation of a new program in the Department's Office of Professional Accountability to resolve selected police complaints through mediation. "Mediation is a voluntary and confidential process where a professional mediator will help citizens and officers talk and listen to each other. This will be an alternative to the traditional complaint and disciplinary process for selected cases," said Kerlikowske. "The new program allows employees and citizens the opportunity to discuss and resolve misunderstandings, miscommunication or the lack of communication experienced during a particular incident," he added.

A mediation program was advocated initially by SPD's former independent auditor, Retired King County Superior Court Judge Terrence Carroll. The OPA has now implemented the program following successful negotiations with the Seattle Police Officer's Guild. Guild President, Sergeant Kevin Hastings stated, "This program has the possibility to be a win-win for all involved. Many of the issues that evolve into complaints are based on a lack of understanding. The mediation program allows for equal dialog between the citizen and the employee to resolve issues without a formal investigation and a black mark on the officer's record."

Cases will be selected for mediation by the OPA Director, Sam Pailca. A complaint will only be mediated if both the complainant and officer agree to participate. "The formal OPA investigative process can be rigid and lengthy, and often fails to get at the heart of the matter. Mediation holds a lot of promise for promoting mutual respect and understanding," she concluded.

Though no longer serving as the OPA Auditor, Judge Carroll has continued his support for mediation at SPD. Now a principal at JDR, he arranged for them to provide their services "pro-bono" as the system is launched. JDR's panelists bring a wealth of experience and insight to the dispute resolution process gained through our years in private practice, in serving at all levels of the Washington State court system and in full-time dispute resolution. Judge Carroll believes that mediation can make a difference in the understanding, attitude and behavior of the participants. "This proposed mediation program represents a great opportunity for the citizens and SPD to gain a better understanding of the differing perspectives in our city as well as bring prompt, non-judgmental resolution to complaints against officers," Carroll added.

Chief Kerlikowske believes that trained, neutral and experienced third party mediators will enhance the accountability system. "The system has had great results in other large cities and metropolitan areas. In Portland, for example, about 90% of officers and citizens give the mediation program high marks. The program allows for both parties to explain their actions and hear the perspective of the parties involved rather than have the issues decided by others," he stated.

####

# Office of Professional Accountability Mediator Exit Survey

Case Number: \_\_\_\_\_

Mediator: \_\_\_\_\_

Date: \_\_\_\_\_

## *I. Certification of Completion and Participation in Good Faith*

a. This certifies that the mediation of this case has been completed. Both parties participated in good faith. \_\_\_\_\_(initials)

or

b. The following parties failed to participate in good faith:

\_\_\_\_\_Citizen      \_\_\_\_\_Officer      \_\_\_\_\_(initials)

## *II. Exit Survey*

1. How many minutes did the mediation last? \_\_\_\_\_
2. How much total time did you spend on this project? \_\_\_\_\_
3. How suitable was this case for mediation? (If not, please explain briefly why not)  

1	2	3	4	5	6	7
Unsuitable		Somewhat suitable			very suitable	
4. Were parties able to successfully resolve their issues or come to an understanding?
5. What (briefly) contributed most to the success (or lack of success) in this case?
6. Rate the difficulty in helping the parties to negotiate and communicate effectively in this case  
(1 = impossible, 2 = very difficult 3 = somewhat difficult 4 = average 5 = somewhat easy 6 = easy 7 = very easy)

_____ Citizen	1	2	3	4	5	6	7
_____ Officer	1	2	3	4	5	6	7
	impossible		average			very easy	

7. Rate the level of engagement of the parties in the process on a scale of 1-7  
 (1- extremely resistant 2- very resistant 3-somewhat resistant 4- neutral 5-somewhat involved  
 6- very involved 7 extremely involved)

_____ Citizen 1	1	2	3	4	5	6	7
_____ Officer 1	1	2	3	4	5	6	7
	extremely resistant		neutral		Extremely involved		

8. Rate the level of satisfaction of the parties with the process (as you perceived it):  
 (1= completely dissatisfied, 7 = totally satisfied)

_____ Citizen 1	1	2	3	4	5	6	7
_____ Officer 1	1	2	3	4	5	6	7
	completely dissatisfied		mixed/neutral			totally satisfied	

9. Are you aware of any problems or barriers to successful mediation that existed in this case?

- \_\_\_\_\_ party's assumptions or expectations
- \_\_\_\_\_ party's bias or resistance
- \_\_\_\_\_ my bias
- \_\_\_\_\_ time issues
- \_\_\_\_\_ location
- \_\_\_\_\_ other (please explain)

10. Was there any additional support or information you needed from OPA in this case?

11. Are there aspects of this case or lessons learned (excluding confidential case details) that you think would be valuable to share with other practitioners, or with the OPA?

## Office of Professional Accountability

### Mediation Program Exit Survey

1.	Are you a citizen or a police officer in this mediation?	_____ Citizen    _____ Police Officer
2.	Was the dispute resolved to your satisfaction? Please explain why or why not:	1 _____ 3 _____ 5 not at all    partial/unsure    completely
3.	Do you feel you understand the other party's perspective better (even if you disagree with it)?	1 _____ 3 _____ 5 no    partial/unsure    yes
4.	Do you feel the other party understands your perspective better (even if they disagree with it)?	1 _____ 3 _____ 5 no    partial/unsure    yes
5.	Whether or not this mediation ended the way you wanted it to, do you feel there was anything gained by mediating this case? If so, what?	1 _____ 3 _____ 5 no    partial/unsure    yes
6.	Do you think you would have been more satisfied if this case had been handled by a supervisor or OPA-IS Sergeant, instead of through mediation?	1 _____ 3 _____ 5 no    unsure    yes
7.	Would you recommend the mediation process to others? Why or why not?	1 _____ 3 _____ 5 no    partial/unsure    yes
8.	The mediator was fair to both sides.	1 _____ 3 _____ 5 disagree    unsure    agree
9.	The mediator seemed genuinely interested in helping to resolve this complaint.	1 _____ 3 _____ 5 disagree    unsure    agree
10.	Was there anything else the mediator(s) could have done to contribute to a positive outcome to the mediation?	

11. Do you have any other observations or recommendations you wish to share with us about this case, mediation generally, or ways we could improve the mediation program?

Thank you! Your comments will help us to evaluate and improve our mediation program. Your participation and comments are confidential.

**If you would be willing to waive confidentiality for evaluation, education, or marketing purposes, please provide a name and number at which you may be reached. You will only be contacted if the other party agrees to a full or partial waiver of confidentiality.**